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In the

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1324

ASSOCIATED GENERAL CONTRACTORS OF MASSACHUSETTS, INC., et al.,

PETITIONERS,

v.

ALAN ALTSHULER, et al.,

RESPONDENTS.

TO THE UNITED STATES COURT OF APPEALS ON PETITION FOR A WRIT OF CERTIORARI FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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ALAN ALTSHULER, et al.,

RESPONDENTS.

BRIEF OF RESPONDENTS ALAN ALTSHULER AND WALTER J. POITRAST AND INTERVENORS UNITED COMMUNITY CONSTRUCTION WORKERS AND MICHAEL WILLIAMS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Court of Appeals is not yet officially reported but appears in Petitioners' Appendix B (Pet. A-41). The opinion of the District Court is reported at 361 F. Supp. 1293 (Pet. A-1).

Jurisdiction

The judgment of the Court of Appeals (Pet. B-23) was entered on November 30, 1973. The Petition for Writ

of Certiorari was filed on February 28, 1974 and received by the Respondents on March 1, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

In order to remedy present "serious" racial imbalance in Boston's construction trades resulting in large part from undisputed past racial discrimination, particularly state funded projects, is it constitutionally permissible for the Commonwealth of Massachusetts in contracting for construction of a federally assisted state project in a 40% minority community in the Boston area to incorporate in the contract, supplementary to federal bid conditions, its own affirmative action bid conditions (§ 1B) which require contractors to take "every possible measure" to maintain from available sources a qualified minority work force on the site based on a ratio of at least 20% minority workers in each job category, where the burden of proving compliance is with the contractors subject to their right to notice and full opportunity to contest allegations of non-compliance and imposition of sanctions?

Constitutional Provisions

The constitutional provisions involved in this case are the Supremacy clause of Article VI and the Equal Protection and Due Process clauses of Amendment XIV, § 1 of the United States Constitution, the text of which appears in page 3 of the Petition.

Statement of the Case

An excellent statement of the facts, background and proceedings of this case is set out in the opinion of the

Court of Appeals which appears in Petitioners' Appendix B, pages B-1 - 8; B-19 - 20. The findings of fact by the District Court judge appear in Petitioners' Appendix B, pages A-5 - 12.

Reasons for Denying the Writ

Although Respondents concede the importance of this case in furthering equal employment opportunity for qualified minority workers in Boston's construction trades, there are no compelling reasons for this Court to "settle" questions of "federal law" decided by the Court of Appeals. Moreover, the decision below is not in conflict with decisions in any other circuit. In essence, the Court of Appeals and District Court decisions are based on careful findings of fact and thoughtful and balanced analyses of law consonant with decisions of this Court and other federal courts nationwide.

I. THE DECISION OF THE COURT OF APPEALS IS FULLY SUPPORTED BY, AND CONSISTENT WITH, THE DECISIONS OF THIS COURT AND OTHER FEDERAL COURTS NATIONWIDE.

A. *The Fourteenth Amendment's Equal Protection clause permits the Commonwealth of Massachusetts to institute an affirmative action plan for hiring qualified minority workers on state funded construction with federal assistance in order to remedy the effects of a proven history of racial discrimination against minorities in such employment.*

This Court has recognized that the Constitution permits states to consider race as a factor in making public policy if necessary to remedy prior illegal racial discrimination.

Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16-17 (1971). Further, this Court has recognized that state agencies have discretionary powers to remedy racial discrimination that are at least as broad, if not broader, than those of federal courts in equity. *Id.*, 15-17. *See* Amendment X, United States Constitution. As with federal courts, the nature of appropriate remedies should be limited only by the nature of the illegal conduct to be corrected. *See Louisiana* v. *United States*, 380 U.S. 145, 154 (1965). Any remedial steps that are reasonably related to rectifying a prior illegal condition are to be upheld. *See Swann, supra* at 31; *cf. Katzenbach* v. *Morgan*, 384 U.S. 641, 648-56 (1966).

Here, the record below proved, and the courts below found, that there had been a history of racial discrimination in effect in the construction trades in Boston. (Pet. A-9 - 11; B-16, 19). Such racial discrimination existed on state funded construction as well as construction funded by other sources. (Appendix, 13-14, 17).

The Commonwealth of Massachusetts instituted its Section 1B plan for minority hiring to rectify the present effects of past racial discrimination on state funded construction and prevent itself from being implicated in continued racial discrimination in effect on projects which the state created, funded, supervised and controlled. (Appendix, 17). The plan applies only to state construction projects located in those minority sections of Boston having a 40% average minority population. (Appendix, 16-17; Pet. B-16). As the courts below held, Section 1B requires contractors to hire only "competent" or "qualified" minority workers. (Pet. A-27; B-2, 17).

Section 1B requires contractors to "maintain . . . a not less than twenty percent ratio of minority employees' man

hours to total employees' man hours in each job category.", if such workers are available. (Pet. A-34). If a sufficient number of qualified workers are not accessible, contractors need only show that they have taken "every possible measure" presently available to find such workers, and they will be excused from meeting the 20% requirement. (Pet. A-39). And as the Court of Appeals held,

> In the present instance, there is no question that a compelling need exists to remedy serious racial imbalance in the construction trades, particularly in Roxbury, Dorchester, and South End, where minorities constitute approximately forty percent of the population, and yet only about four percent of the membership of buildings trade unions, and where there has been a long history of racial discrimination in those unions. (Pet. B-16).

Since the state created the provisions of Section 1B to remedy a history of prior racial discrimination in state funded construction, the 20% minority hiring racial preference does not violate equal protection. In upholding this plan, the Court of Appeals relied on numerous other decisions throughout the country which have recognized that similar racial preferences for minority groups to rectify past racial discrimination in employment are completely valid under the Equal Protection clause. (Pet. B-14). As the Second Circuit recently held in *United States* v. *Wood, Wire & Metal Lathers Industrial Union, Local Union No. 46*, 471 F.2d 408, 413 (1973), *cert. den.*, 41 U.S.L.W. 3645 (U.S. June 12, 1973), "while quotas merely to attain racial balance are forbidden, quotas to correct past discriminatory practices are not.'

B. *Requiring contractors to bear the burden of showing that they have taken "every possible measure" to reach the 20% minority hiring goal before excusing contractors from reaching the goal is reasonably related to remedying past racial discrimination and does not violate the Fourteenth Amendment's Due Process clause.*

The "every possible measure" requirement is an integral part of the Commonwealth's affirmative action plan and, consistent with decisions of this Court, must be sustained if it is reasonably related to the goal of remedying the present effects of past racial discrimination. (Pet. B-16, 17). As the Court of Appeals said below, "Even where a long history of discrimination and continuing racial imbalance compels the remedial use of racial criteria, however, the means chosen to implement the compelling interest should be reasonably related to the desired end." (Pet. B-16). On this point, Respondent Secretary Altshuler, who promulgated the provisions, stated his justification of the reasonableness of the "every possible measure" standard in an uncontested affidavit in the District Court below:

> We established that contractors must either achieve the 20% goal or show that they had taken "every possible measure" to do so because we wanted to be sure that contractors took their 1B responsibility seriously. We believe contractors could meet this standard and be excused from full attainment of the 20% goal in all legitimate cases by showing what efforts they made to each 20%, why such efforts failed, and why other reasonable efforts were not "possible".[1] Further, we believe that a lesser standard

[1] The Commonwealth has already made clear in this affidavit that contractors are only required to take every possible "reasonable"

might be unenforceable in practice. Whenever a contractor shows that he tried "every possible measure" to reach the 20% goal and failed, he will be excused from reaching that goal. (Appendix, 18).

Further, under Section 1B, contractors are provided with notice and a full opportunity to contest allegations that they have failed to take "every possible measure" to reach the 20% goal before any sanctions can be imposed. (Pet. B-20; Appendix, 20). The sanctions process thus fully complies with procedural Due Process (Pet. A-12, A-28; B-19-21).

Finally, although petitioners pontificate that because of the "every possible measure" standard contractors "will have to prefer a 'possibly qualified' minority applicant over a fully qualified white worker whenever a quota has not been filled;" that "less-than-fully qualified minority workers will be hired on pragmatic grounds"; and that contractors "will conclude that deviations from the quota represents a greater threat to [their] livelihood than the hiring of workers of dubious competence", (Pet. 12) the record contains not one iota of evidence to support this conjecture. Whether the "every possible measure" standard had already forced contractors to hire unqualified workers on the Boston State College project or whether it would force contractors to hire such unqualified workers on future projects were questions of fact which could only be established by evidence presented to the court. Since petitioners failed to present any such evidence, all their unsupported assertions as to hiring "less-

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effort, not every effort that might be physically possible, and the Commonwealth is bound by this representation, as a matter of law. *See* 6 Moore's *Federal Practice*, para. 56-11[3] (1966).

than-qualified" or "possibly qualified" workers should be disregarded.[2]

C. *Executive Order No. 11246 does not "preempt" the state's § 1B provisions nor does § 1B "conflict" with the Executive Order under the Supremacy clause, Article VI, of the United States Constitution.*

This Court has established that

> federal regulations of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persausive reasons—either that the nature of the regulatd subjct matter permits no other conclusion, or that the Congress has unmistakably so ordained. *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142 (1963).

Nothing in the "nature" of remedying racial discrimination on state funded construction projects (although federally assisted) inherently requires that this be a subject for "exclusive federal regulation." *Florida Lime, supra* at 143.

Indeed, a state's determination of what steps it believes are necessary to satisfy its obligations to avoid racial discrimination under the Equal Protection clause in employment on state funded projects is the kind of subject traditionally appropriate for states to resolve by them-

[2] Petitioners' assertions that the Court of Appeals held that Section 1B "*will* likely result in the hiring of unqualified minority workers" (Pet. 9-10) and that it "would be likely to cause a contractor to hire unqualified minority applicants" (Pet. 12-13) is not quite true. The Court simply stated that "in principle" Section 1B "*might* create the likelihood that unqualified workers would be hired." [Emphasis added] (Pet. B-18).

selves. *Cf. Colorado Anti-Discrimination Commission* v. *Continental Airlines*, 373 U.S. 714, 721 (1963). And Massachusetts has demonstrated that it has an intense state interest in ensuring that there is an effective affirmative action plan for hiring on state funded construction projects. (Pet. A-14-15; A-1-10).

Nor has Congress "unmistakably . . . ordained" that it intended Executive Order 11246 to "preempt" the field of eliminating racial discrimination in hiring on state funded construction projects. Petitioners have not cited any language explicitly indicating that Congress (or the Executive) intended the Order to preempt the field. Indeed, as the Court of Appeals noted:

> The Secretary of Labor has stated, as *amicus curiae*, that the federal program is *not* meant to preempt state programs such as the Commonwealth's § 1B. And Congressional policy in this area, as expressed in Title VII of the Civil Rights Act of 1964, the statute most closely analogous to the President's Executive Order, is clearly one of encouraging state cooperation and initiative in remedying racial discrimination. Title VII, 42 U.S.C., § 2000h-4 expressly disclaims any intent to preempt state action. [Emphasis added] (Pet. B-10).
>
> *See also Colorado Anti-Discrimination Commission, supra*, at 722-725.

Nor this there any "conflict" between Section 1B and the federal Boston Plan, either in purposes or in practice. As the Court of Appeals stated, "Clearly, the broad purposes which lay behind the federal Boston Plan and the Commonwealth's § 1B are congruent. . . . Both plans envisage minority hiring goals as a means of achieving equal opportunity." (Pet. B-9).

In practice, the federal and state plans are compatible with each other and do not conflict. Both courts below recognized that the federal plan merely established minimum goals.

This Court has recognized that even if private individuals' activities have been certified to be in "compliance with minimum federal standards" states are not barred from imposing "more demanding state regulations" as long as individuals are able to comply with both sets of regulations. *See Florida Lime, supra* at 141-143. The test for "actual conflict" is whether "dual compliance," i.e. compliance with both the state and federal law, is "imposible." *Florida Lime, supra* at 143.

Here there is no evidence whatsoever in the record that "dual compliance" is "impossible."[3] To the contrary, all the relevant evidence in the record attests that contractors could in fact fully comply with all provisions of the federal and state plans at the same time and the District Court so found. (Pet. A-18).

And as the Court of Appeals stated:

> While we acknowledge that § 1B may be more demanding than the Boston Plan, and may well involve higher administrative costs, there is no reason to suppose that contractors could not comply with both at the same time. By complying with § 1B's minority hiring goals on projects funded by both the

[3] See Pet. B-10. All that petitioners have shown is that the § 1B provisions are "different" from the federal plan, but difference alone is not enough. As this Court said in *Florida Lime, supra* at 141: "That the California statute and the federal marketing orders embody different maturity tests is clear. However, this poses, rather than disposes, of the problem before us." Petitioners' assertion that the Section 1B "undercuts a vital federal interest" (Pet. 17) and that Section 1B "will so impair the operation of the Boston Plan as to render it a nullity" (Pet. 21) are unadulterated speculations completely unsupported by any evidence in the record and should be disregarded.

state and the federal government, contractors would also comply with the Boston Plan's goals. (Pet. B-10).

II. The Decision Below Is Not in Conflict With Decisions in Any Other Circuit.

Petitioners have not cited a single precedent to dispute the ruling below that a governmental employment preference for racial minorities created to remedy the current effect of historic racial discrimination against such minorities does not violate constitutional "equal protection."[4] Respondents are unable to discover any holdings disputing this widely accepted principle, nor have petitioners evidently been able to find any.

The sole case which petitioners cite in this regard for the proposition that it "conflicts in principle with the decision in this case",[5] *Mancari* v. *Morton*, 5 CCH Employment Practices Decisions p. 7930, ¶8643 (D.N.M. 1973), *prob. juris. noted*, 42 U.S.C.W. 3405 (U.S. Jan. 14, 1974), in fact does not conflict at all. In *Mancari*, there was no evidence that the Indian preference policy was created to remedy historic discrimination against Indians in jobs at the Bureau of Indian Affairs. As the three-judge court held, "The defendants had the burden of coming forward with evidence of an important governmental objective [to justify the Indian preference policy] but put in no evidence directed to this matter." at p. 7934. Since the preference policy appeared to be totally unjustified by any public purpose, the Court quite reasonably suggested the policy might be unconstitutional.[6]

Petitioners do not even purport to cite any cases which

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[4] See Pet. 10-16.

[5] Pet. 15.

[6] The court's language in this regard is *dictum* since the court focused on the statutory issue and never reached the constitutional issue.

challenge the legal principles applied by the Court of Appeals below in determining whether there was federal preemption or conflict. (Pet. 17-21). In fact, in deciding these questions, the Court of Appeals relied directly on leading decisions of this Court. (Pet. B-8, 11).

In sum, no conflict exists with either the underlying legal principles governing this case, or the decisions in the other federal courts applying such principles.

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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March 28, 1974

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 72-3410-F

ASSOCIATED GENERAL CONTRACTORS
OF MASSACHUSETTS, INC., ET AL.,
PLAINTIFFS,
v.
ALAN ALTSHULER, ET AL.,
DEFENDANTS.

AFFIDAVIT OF ALAN ALTSHULER

I, Alan Altshuler, being duly sworn, hereby depose and say:

1. I am the Secretary of the Executive Office of Transportation and Construction of the Commonwealth of Massachusetts. I was duly appointed to that position by the Governor of the Commonwealth of Massachusetts pursuant to M.G.L.A. c. 6A §3 on June 25, 1971.

2. As Secretary, I am legally responsible for the "exercise of all powers and the performance of all duties assigned by law" to the Bureau of Building Construction within the Executive Office of Transportation and Construction. M.G.L.A. c. 6A §20.

3. In my capacity as Secretary of the Executive Office of Transportation and Construction, I promulgated the I-B contract provisions which plaintiffs challenge in the above-captioned case and am familiar with those provisions.

4. I have read the *Complaint* filed in the above-captioned case and am familiar with the contents thereof.

5. On March 31, 1972, Governor Francis W. Sargent

directed me to review whether reliance by the Commonwealth on the federal Boston Plan for state funded construction projects in the Boston Plan area would adequately remedy the effects of past racial discrimination on such state funded projects or whether the Commonwealth should develop an independent plan to achieve this objective. The Governor specifically noted his dissatisfaction with the fact that the federal Boston Plan had been negotiated without the involvement of state officials or the minority community. The matter of remedying the effects of past racial discrimination and achieving equal employment opportunity on state funded construction projects is a matter of intense concern and interest to the Commonwealth.

6. After receiving the Governor's directive, I requested my Assistant Secretary William Najam to review with me the history of hiring of minorities in the construction industry in the Boston area. Over the course of the following weeks we undertook an extensive review of this history. I personally attended many of the meetings referred to in *Further Affidavit of William J. Najam, Jr.*, paragraph 31, and worked closely with Assistant Secretary Najam on this review. He reported to me periodically the contents of meetings I was unable to attend and the results of the investigations he undertook without my direct participation. I have read the affidavit entitled *Further Affidavit of William J. Najam, Jr.* The review Assistant Secretary Najam describes in that affidavit is an accurate statement of the review we undertook.

7. As a result of my direct participation in Assistant Secretary's Najam's review and information he told me based on that review, I learned that:

a) Blacks, Puerto Ricans, Orientals and American Indians constituted only 1-3% at most of the skilled construction work force in the City of Bos-

ton although they constituted approximately 20% of the population of the City and approximately 39% of the overall population of Roxbury, Dorchester and South End;

b) Such severe underrepresentation of minorities in construction jobs had gone on for many years;

c) Virtually all contractors who had done major public works construction for the Commonwealth in the Boston Plan area and would be expected to do such work in the foreseeable future based on their size and experience hired their construction workers exclusively from established building trade unions;

d) That these unions, other than the laborers' unions, had virtually no minority members;

e) That numerous trade union practices resulted in systematic exclusion of minorities from building trade union membership in the Boston area;

f) Unless the Commonwealth took affirmative action to substantially increase the number of minority workers on state funded projects in Roxbury, Dorchester and South End, minority workers would constitute at most only a nominal percentage of all skilled workers on such jobs although minorities constituted almost 40% of the population of those areas;

g) The federal Boston Plan II, in effect for 1971-72 and renewable thereafter, wholly excluded minority community representatives as parties and had no mechanism for guaranteeing minority input, modification or review of the Plan;

h) The federal Plan's sole hiring goals consisted of hiring a number of minority workers on constructions jobs during a year but made no provision that such persons work at least any particular

minimum numbers of days or hours or earn at least any particular minimum income during that year;

i) The federal Plan's hiring goal for the year could be satisfied even if the minority workers were unemployed virtually the entire year and made virtually no income;

j) The federal Plan's numerical goals were allegedly set for each trade to enable minorities to constitute approximately 4% of each trade in 1971-72 in the greater Boston area covered by the Plan and an additional 2% for each of the three succeeding years;

k) The federal Plan was to have added approximately 4% of the work force, or 700 workers, by the end of its second year in July, 1972. However, as of May, 1972 the Plan had added only approximately 350 workers. Moreover, the administrators of the Plan could not determine accurately how many of those 350 workers were still working in the construction industry at that time; the Director of the Plan estimated that only approximately 200 of the original 350 workers were still working by the Spring of 1972;

l) The contractor and union association parties to the federal Plan and the federal government itself refused to make available official statistics of the Plan's operations to the Commonwealth notwithstanding repeated requests by the Commonwealth for such information.

8. Based upon all the information I gathered from Assistant Secretary Najam and on my own, including but not limited to that referred to in paragraphs 5, 6, and 7 above, I concluded that the Executive Office of Transportation and Construction should promulgate its

own affirmative action provisions for hiring minority workers for state funded construction projects in Roxbury, Dorchester and South End. At that time we also urged the signatories to the federal Boston Plan to fully comply with the federal Plan's provisions, and, whenever possible, to apply minorities recruited through the federal Boston Plan to satisfy the I-B goals.

9. I instituted those provisions contained in Section I-B of the contract to remedy the present effects of past racial discrimination in construction trades on state funded projects in the Boston area minority community, and thereby avoid having the Commonwealth participate in perpetuating racial discrimination in effect in state projects which the Commonwealth created, funded, supervised and controlled.

10. In I-B, we established a goal of 20% minority man-hours for a number of reasons. We knew that minorities constituted approximately 39% of Roxbury, Dorchester and South End and therefore we had to establish a substantial percentage goal to reasonably remedy past exclusion from jobs for that community. We knew that if we established a 20% goal it would in fact add only approximately 30-40 new minority workers per year to state projects and we believed any fewer number would be meaningless. We wanted to establish a goal that could be reached based on the current availability of minority journeymen and trainees; based on our investigations we believed 20% could be reached.

We required that the goal be man-hours rather than simply men placed in a job to ensure that minority workers would be hired for substantial periods of time. We established a liaison committee including minority members so that representatives of the minority community which would be so heavily affected by I-B could participate in its administration and operation.

We required record keeping of wages and hours and Commonwealth access to such so that the Commonwealth could effectively determine whether the I-B provisions were being complied with and oversee its enforcement. We specified that multiple sources of referral, including minority labor organizations, would be available to contractors so that minority hiring goals would not be frustrated at the threshold by traditional exclusive contractor reliance on trade unions which have almost no minority members. However, we left entirely to the contractor the determination of which minority applicants were qualified and which he wished to hire.

We established that contractors must either achieve the 20% goal or show that they had taken "every possible measure" to do so because we wanted to be sure that contractors took their I-B responsibility seriously. We believe contractors could meet this standard and be excused from full attainment of the 20% goal in all legitimate cases by showing what efforts they made to reach 20%, why such efforts failed, and why other reasonable efforts were not "possible." Further, we believe that a lesser standard might be unenforceable in practice. Whenever a contractor shows that he tried "every possible measure" to reach the 20% goal and failed, he will be excused from reaching that goal.

11. The Commonwealth of Massachusetts will supervise, control and be fully responsible for all construction projects to which the state I-B contract provision challenged in this action will apply in that it will:

a) Provide substantial state funding for such projects;

b) Will own the land on which the projects are to be built and will own the buildings resulting from the construction;

c) Will closely supervise the design and construction of the projects;

d) Will maintain the facilities at its expense once they are built;
e) Will regulate the use of the facilities;
f) Such facilities will serve a public function;
g) Will make the facilities exempt from all state and local taxes because of their public use, function and ownership.

12. Having read the plaintiffs' verified *Complaint* in this action, I deny certain of the allegations and implications contained therein. Specifically, I state that:

a) I-B does not require contractors to hire minority workers regardless of their qualifications; to the contrary, the Boston State contract includes, and all future contracts in which the I-B provisions will be contained will include, a provision that requires contractors to hire only "competent" workers. (See Contract §V-3). The Commonwealth's interpretation of these provisions of the contract is that they require contractors to hire only "competent" workers in all situations including workers hired under all I-B provisions and that "competent" is synonymous with "qualified." I will ensure that the "competent" worker requirement is enforced at all times.
b) The provisions of I-B are fully consistent with federal law in all respects including the 20% man-hour goal, qualification of workers, standard for excuse from achieving 20%, and contractor's burden to show compliance not "possible." These standards may be different from, and in some respects, higher than the standards contained in the federal plan but they are wholly consistent. A single contractor can in fact comply with the provisions of both the federal and state plans at the same time; there is thus no conflict between them.

c) I-B does not allow sanctions to be imposed against a contractor for non-compliance prior to notice and hearing. To the contrary, I-B provides and I will ensure in all cases, that no sanctions are taken against any contractor prior to notice and hearing as set forth in M.G.L.A. c. 30A § 10, 11. See I-B addendum 2.

d) Although I-B may require simultaneous job referrals in certain instances, each contractor retains the right to hire whichever workers he desires.

e) I do not necessarily "intend" to require I-B provisions in other high minority areas of the Commonwealth. Prior to instituting such program in any other area, I would require a full evaluation of local conditions in such area. As of right now, I do not intend to institute the I-B provisions in any other area of the Commonwealth.

f) No contractor will be at a "serious economic disadvantage" *vis a vis* any other contractor if he bids on a state contract with I-B provisions because all bidders on the contract will be in the identical position as to I-B. No contractor will suffer "irreparable harm" by bidding on a I-B contract, except perhaps, such technical harm as he may suffer in having to be bound by provisions he may believe are not legal.

I, Alan Altshuler, being duly sworn, hereby depose and say that I have read the above affidavit and all statements made therein are true and correct based on my personal knowledge.

(s) ALAN ALTSHULER
ALAN ALTSHULER

Signed and sworn before me this 11th day of January, 1973.

(s) LEAH JANSIZIAN
Notary Public
My Commission Expires:
March 5, 1976